

**Final**  
**IMPLEMENTING AGREEMENT**  
**for the**  
**SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN**  
**for**  
**THE RIO GRANDE WATER CONSERVATION DISTRICT, U.S. FISH AND WILDLIFE**  
**SERVICE, STATE OF COLORADO DEPARTMENT OF NATURAL RESOURCES, AND**  
**SIX COUNTIES AND FOUR MUNICIPALITIES**

**October 2012**

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## 1.0 PARTIES

The parties to this Implementing Agreement are the Rio Grande Water Conservation District (District); six counties within the San Luis Valley—Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache (collectively the “Counties”); four cities and towns—Alamosa, Monte Vista, Del Norte, and South Fork (collectively the “Municipalities”); the U.S. Fish and Wildlife Service (“Service”); and the State of Colorado Department of Natural Resources (“DNR”) (collectively, the Parties). The District, Counties, Municipalities, and DNR are collectively referred to herein as the “Permittees.”

## 2.0 RECITALS AND PURPOSES

**2.1 Recitals.** The parties have entered into this agreement in consideration of the following facts:

(a) The San Luis Valley (Valley) is a large intermountain basin in southern Colorado. The riparian communities along the Rio Grande, Conejos River, and smaller tributaries in the Valley have been determined to provide, or potentially provide, habitat for the federally endangered southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*) and the federal candidate yellow-billed cuckoo, western U.S. distinct population segment (cuckoo) (*Coccyzus americanus*) (the flycatcher and cuckoo are collectively referred to herein as the “covered species”); and

(b) The Permittees have developed a series of measures, described in the San Luis Valley Regional Habitat Conservation Plan (HCP), to minimize, and mitigate to the maximum extent practicable, the effects of take of flycatchers and cuckoos incidental to the Permittees’ covered activities.

**2.2 Purposes.** The purposes of this agreement are:

- (a) To ensure implementation of each of the terms of the HCP;
- (b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and
- (c) To provide assurances to the Permittees that as long as the terms of the HCP, the incidental take permits (permits), and this agreement are performed, no additional mitigation will be required of the Permittees with respect to covered species, except as provided for in this agreement or required by law.

### 3.0 DEFINITIONS

Terms used in this agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this agreement expressly provides otherwise.

The following terms as used in this agreement will have the meanings set forth below:

**“Permittees”** mean the holders of the incidental take permit(s) supported by the HCP including the Rio Grande Water Conservation District; Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache counties; the State of Colorado; and the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork.

**“Changed circumstances”** means changes in circumstances affecting a covered species or the geographic area covered by the HCP that can reasonably be anticipated by the parties to the HCP and that can reasonably be planned for in the HCP (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event). Changed circumstances and the planned responses to those circumstances are described in Section 7.4 of the HCP. Changed circumstances are not unforeseen circumstances.

**“Covered activities”** means certain activities carried out by Permittees, or their members and constituents, on covered lands that may result in incidental take of covered species, including those activities to be conducted by the Permittees within the riparian areas, as identified in Section 3 of the HCP.

**“Covered lands”** means the areas of delineated potential flycatcher and cuckoo habitat along approximately 250 miles of streams in the Valley, as well as more than 4,000 square miles (2.9 million acres) of land in the Valley. The HCP boundaries establish the geographic limits of flycatcher and cuckoo habitat on public and private lands in the Valley and is the area upon which the incidental take permits authorize incidental take of covered species and the area to which the HCP's conservation and mitigation measures apply. These lands are described in Section 1.3 of the HCP. Activities conducted by the Permittees that impact flycatcher or cuckoo habitat outside of the HCP boundaries will require separate ESA compliance.

**“Covered species”** means the subspecies of flycatcher (*Empidonax traillii extimus*) and cuckoo (*Coccyzus americanus*—western U.S. distinct population segment), which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA § 10(a)(1)(B).

**“District”** means the Rio Grande Water Conservation District.

“**HCP**” means the San Luis Valley Regional Habitat Conservation Plan prepared by the Permittees for certain activities to be conducted on covered lands in the San Luis Valley of Colorado.

“**Listed species**” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

“**Permit**” means the incidental take permit issued by the Service to each Permittee pursuant to Section 10 of the ESA (16 USC § 1539) for take incidental to covered activities in the Valley.

“**Riparian habitat**” means the plant communities that are found near streams and other bodies of water. In the Valley, riparian habitat is characterized by clusters of cottonwood and willow trees; and various shrubs surrounded by open water or subirrigated soils, wet meadows, and wetland areas.

“**Take**” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct for any listed species. Harm means an act that actually kills or injures a member of a covered species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a covered species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

“**Unforeseen circumstances**” means changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers or the Service at the time of the HCP’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

“**Wildlife Refuges**” means U.S. Fish and Wildlife Service National Wildlife Refuges.

## **4.0 OBLIGATIONS OF THE PARTIES**

**4.1 *Obligations of Permittees; methodology to determine compliance.*** Permittees will fully and faithfully perform all obligations assigned to them under this agreement, their respective permits, and the HCP. Permittees will be deemed in compliance with their obligations if the commitments in Section 5.0 of the HCP have been or are being implemented in substantial conformity with their terms. The Permittees may permanently impact up to a cumulative total of 34.2 acres of the covered lands over the 30-year life of the permits and temporarily impact up to 270 acres of the covered lands in any given year, with resulting incidental take of flycatchers and cuckoos, in conjunction with the covered activities. The Permittees and Service

shall adhere to the methodology set forth in HCP Sections 3.0 and 4.0 and in Appendix A of the HCP for determining impacts to flycatchers and cuckoos and their habitat, and for quantifying incidental take of flycatchers and cuckoos, associated with the covered activities. The District and Permittees will work with private landowners and federal and state agencies to facilitate riparian habitat conservation and enhancement. The enrollment of private lands for mitigation purposes will occur on an individual, parcel-by-parcel basis. While it will be incumbent on the District and Permittees to find and secure sufficient mitigation on nonfederal public or private lands, all mitigation activities on private lands will occur on an at-will, voluntary basis that is at the discretion of each individual landowner.

Each county Permittee will adopt a resolution, ordinance or other appropriate legal mechanism that provides the authority to enable HCP implementation and incidental take permit protections for landowners, as described in Section 5.6 of the HCP. The legal mechanism must be adopted and in place for the incidental take permit protections to be extended to private landowners within the county.

**4.2 Obligations of the Service.** Upon execution of this agreement by all parties and satisfaction of all other applicable legal requirements, the Service will issue each Permittee a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by the Permittee of the covered species resulting from covered activities on covered lands.

**4.2.1 Permit coverage.** The permits will identify all covered species. The permits will take effect for listed covered species at the time the permits are issued. Subject to compliance with all other terms of this agreement, the permits will take effect for an unlisted covered species upon the listing of such species.

**4.2.2 “No surprises” assurances.** Provided that Permittees have complied with their obligations under the HCP, this agreement, and the permits (including any provisions for changed circumstances or adaptive management), the Service can require Permittees to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the “no surprises” regulations at 50 CFR §§ 17.22(b)(5) and (6), and 17.32(b)(5) and (6).

**4.2.3 Covered activities with a federal nexus.** The Section 7 biological opinion (BO) on issuance of the permits will evaluate the impacts associated with covered activities, and will evaluate the HCP conservation measures and any reasonable and prudent measures, if necessary, to address the impacts and authorized take of flycatchers and cuckoos associated with such activities. This BO will contain the Service’s determination of whether the covered activities would likely jeopardize the continued existence of flycatchers and cuckoos or result in the destruction or adverse modification of designated or proposed critical habitat for the flycatcher under Section 7(a)(2) of the ESA. Accordingly, from a procedural standpoint, when a Permittee

undertakes an individual covered activity that involves a federal action subject to Section 7 of the ESA, the Service and action agency will determine whether the impacts of the proposed federal action associated with the covered activity on flycatchers and cuckoos have already been analyzed by the Service and authorized as part of the HCP. If the impacts have been previously analyzed, the Service will respond to the request for formal consultation with a letter explaining that no further consultation is necessary as the effects to flycatchers and cuckoos have already been analyzed in the BO on the San Luis Valley HCP, and that the Permittee is in possession of a permit that covers take from the project.

#### **4.3 *Interim obligations upon a finding of unforeseen circumstances.***

If the Service makes a finding of unforeseen circumstances during the period necessary to determine the nature and location of additional or modified mitigation, Permittees will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the covered species.

**4.4 *Summary of Implementation Responsibilities.*** Implementation of the HCP will be a collaborative effort between the District, Permittees and other implementation partners. Specific implementation responsibilities for each entity are summarized below.

#### **Service**

- Participate in the HCP steering committee
- Provide technical assistance in the implementation, monitoring, and adaptive management of the HCP, and participate in revisions and amendments as needed

#### **District**

- Oversee HCP implementation
- Provide staff support for HCP implementation
- Track impacts and identify and track mitigation acres
- Negotiate and secure landowner cooperative agreements, management agreements, or HCP-specific easement language
- Coordinate habitat quality monitoring on mitigation lands and reference sites
- Coordinate Valley-wide habitat mapping (every 10 years)
- Coordinate habitat enhancement activities as needed on mitigation lands to achieve and maintain mitigation commitments
- Coordinate the HCP steering committee
- Coordinate and implement education and outreach efforts
- Coordinate with county Land Use Administrators to provide information to landowners from the District regarding procedures and remedies for impacts beyond the scope of the HCP

- Work with the Permittees, federal agencies, and other partners to coordinate voluntary conservation efforts and to secure necessary funding
- Prepare annual HCP report for submission to the Service
- Serve as a point of contact for agencies, landowners, and the general public
- Develop an annual work plan based on recommendations from the steering committee
- Other tasks, as needed

## **DNR**

- Survey for covered species on State lands at least once every three years as described in the HCP
- Monitor habitat quality on State lands as described in the HCP
- Participate in the HCP steering committee

## **Counties (Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache)**

- Adopt and enforce land use ordinance language
- Compile and mail landowner notification letters (every 10 years)
- Report County-permitted activities with permanent impacts
- Provide HCP information and guidance to landowners
- Participate in the HCP steering committee

## **Municipalities (Alamosa, Monte Vista, Del Norte, and South Fork)**

- Report municipal activities with permanent impacts
- Report floodway clearing in excess of 4 acres/year
- Participation in the HCP steering committee

## **Federal Land Management Agencies**

- Survey for covered species on federal lands at least once every three years as described in the HCP
- Monitor habitat quality on federal lands as described in the HCP
- Participate in the HCP steering committee

## **5.0 INCORPORATION OF HCP**

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this agreement and the HCP, the terms of this agreement will control. In all other cases, the terms of this agreement and the terms of the HCP will be interpreted to be supplementary to each other.

## **6.0 TERM**

**6.1 Initial term.** This agreement and the HCP will become effective on the date the Service issues the permits. This agreement, the HCP, and the permits will remain in effect for a period of 30 years from issuance of the original permits, except as provided below.

**6.2 Permit suspension or revocation.** The Service may suspend or revoke a permit for reasons cited in 50 CFR §§ 13.27 through 13.28. The Service also may revoke the permit based on a determination that the continuation of the permitted activity would be likely to jeopardize the continued existence of the covered species only if the Service has not been successful in remedying the situation in a timely fashion through other means as provided in the No Surprises rule (50 CFR §§ 17.22(b)(5) and (6), and 17.32(b)(5) and (6)). Prior to proposing any suspension or revocation of a permit, the Service will meet and confer informally with the affected Permittee(s) in an effort to resolve its grounds for concern. If these attempts at informal resolution are unsuccessful, the Service will then follow the provisions of 50 CFR §§ 13.27 – 13.28 prior to making a final decision to suspend or revoke the permit. A suspension shall remain in effect until the Service determines the Permittee(s) have corrected the deficiencies. A permit will only be revoked if the Service and the Permittee(s) have not been successful in remedying the causes for revocation through other means. A partial suspension or revocation may apply to only specified Permittee(s), or to only a portion of the permit coverage area or permitted/covered activities. In the event of a partial suspension or revocation, the portion of a permit not subject to the suspension or revocation shall remain in full force and effect. The permits of the other Permittees implementing the HCP also shall remain in full force and effect and shall be unaffected by those suspension or revocation procedures. In the event of suspension or revocation, the Permittees' obligations under this agreement and the HCP will continue until the Service determines that all take of covered species that occurred under the permit has been fully mitigated in accordance with the HCP.

**6.3 Withdrawal of participation.** At any time during the term of this HCP and permits, a Permittee may choose to discontinue its participation in this HCP as to: a) one or more of the covered species; (b) a portion of the permit coverage area; and/or c) one or more of the permitted/covered activities. The permit may be surrendered in accordance with 50 CFR § 13.26. The consequences of such withdrawal will be to eliminate all incidental take coverage otherwise available under the HCP and the permit for future activities of that Permittee. Withdrawal of one or more of the counties or local jurisdictions from the HCP will not affect the validity of the HCP as to the other participating entities.

In the event of a withdrawal of participation by a Permittee(s), the permit and No Surprises assurances will be relinquished. No subsequent protection or management of

habitat shall be required of the Permittee(s) pursuant to 50 CFR § 17.22(a)(7) unless necessary to mitigate for take of flycatchers and cuckoos that occurred pursuant to the terms of the permits before the withdrawal, as determined by the Service in collaboration with the Permittee(s).

**6.4 *Renewal of the permit(s).*** Upon agreement of the parties and compliance with all applicable laws, the permit(s) may be renewed in accordance with 50 CFR 13.22. If a Permittee desires to renew its permit, it will so notify the Service at least one year before the then-current term is scheduled to expire. The Service will reevaluate the HCP and its modifications to determine that permit issuance criteria are met before agreeing to a renewal.

## **7.0 FUNDING**

Although Permittees are not allowed, pursuant to Article 10 § 20 (4)(b) of the Colorado Constitution (TABOR) and/or statutory restrictions under 30-25-103 C.R.S., to commit taxpayer funds for multiple-fiscal year obligations, the Permittees intend to include the necessary funding to fulfill their obligations as described in Section 7.1 of the HCP in their yearly budgeting process consistent with the needs of the individual government entity and to the extent allowed by law. Permittees will promptly notify the Service of any material change in Permittees' financial ability to fulfill their obligations. In addition to providing any such notice, Permittees will provide the Service with reasonably available financial information indicating whether they are able to fulfill their financial obligations under the HCP. Should any such financial changes impede the ability of any Permittee to fulfill its obligations under the HCP, the relevant Permittees, the District, and the Service shall immediately engage in a collaborative process to develop solutions to ensure full implementation of the HCP.

## **8.0 MONITORING AND REPORTING**

**8.1 *Planned periodic reports.*** Permittees will submit reports annually describing their activities and results of the monitoring program provided for in the HCP as described in Sections 5.6 and 6.0 of the HCP.

**8.2 *Other reports.*** Within 30 days of being requested by the Service, Permittees will provide any additional information in their possession or control related to implementation of the HCP that is requested by the Service for the purpose of assessing whether the terms and conditions of the permits and the HCP, including the HCP's adaptive management plan, are being fully implemented.

**8.3 Certification of reports.** All reports will include the following certification from a responsible official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

**8.4 Monitoring by the Service.** Because the HCP requires no minimization or mitigation measures by landowners other than the Permittees, the Service does not need access to landowners' lands for HCP compliance monitoring. However, the Service may monitor those lands belonging to landowners who have volunteered to sign a Landowner Cooperative Agreement or Habitat Management Agreement to help the District fulfill the HCP's mitigation obligations. The purpose of such monitoring is to assess the effectiveness of the mitigation effort on that property. To follow up on the effectiveness of the mitigation efforts on a particular property, the Service will make arrangements with the voluntary landowner for property access at least 14 days in advance. During monitoring, the Service may be accompanied by the District or the District's designated representatives. The Permittees shall allow the Service, or other properly permitted and qualified persons designated by the Service, to enter the Permittees' lands covered by the HCP at reasonable hours and times in accordance with 50 CFR §§ 13.21 (e)(2) and 13.47. Nothing in this section precludes the Service from carrying out its duties as required and authorized by law.

## **9.0 CHANGED CIRCUMSTANCES**

**9.1 Permittees-initiated response to changed circumstances.** Permittees will give notice to the Service within seven (7) days after learning that any of the changed circumstances listed in Section 7.4 of the HCP has occurred. As soon as practicable thereafter, the Service and Permittees will convene to discuss a schedule to address the changed circumstances. Permittees will modify their activities in the manner described in Section 7.4 of the HCP to the extent necessary to mitigate the effects of the changed circumstances on covered species, and will report to the Service on their actions. Permittees will make such modifications without awaiting notice from the Service.

**9.2 Service-initiated response to changed circumstances.** If the Service determines that changed circumstances have occurred and that Permittees have not responded in accordance with Section 7.4 of the HCP, the Service will so notify Permittees and will direct Permittees to make the required changes. As soon as practicable thereafter, Permittees will make the required changes and report to the Service on their actions.

**9.3 Effect of changed circumstances.** Changed circumstances are provided for in the HCP and, therefore, do not constitute unforeseen circumstances or require amendment of the permits or HCP. Changed circumstances do not constitute “new information” under 50 CFR § 402.16 and, therefore, the occurrence of changed circumstances does not require the re-initiation of formal consultation by the Service under Section 7 of the ESA on its action of issuing the permits. As long as Permittees are in compliance with their permits and the requirements of Section 7.4 of the HCP, the Service shall not require any conservation or mitigation measures or funding by the Permittees in response to changed circumstances other than those measures specified in Section 7.4.

**9.4 Effect of unforeseen circumstances.** If unforeseen circumstances arise during the life of the permits, and additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, adjustments to the HCP may be proposed by the Permittees or the Service to address those circumstances. The Service and Permittees will work together to redirect resources to address unforeseen circumstances. Provided the Permittees are implementing the HCP in good faith, the Service shall not: (A) require the commitment of any additional land, water, or financial compensation by the Permittees without the consent of the Permittees; or (B) impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Permittees under the original terms of the HCP, including additional restrictions on the permitted activities. Even if there are unforeseen circumstances, the permits shall remain valid if the Permittees comply with permit requirements, HCP requirements, and any additional measures developed in accordance with this section.

## **10.0 ADAPTIVE MANAGEMENT**

**10.1 Permittees-initiated adaptive management.** Permittees will implement the adaptive management provisions in Section 6.2 of the HCP when changes in management practices are necessary to achieve the HCP’s biological objectives, or to respond to monitoring results or new scientific information. Permittees will make such changes without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to this section.

**10.2 Service-initiated adaptive management.** If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittees have not changed their management practices in accordance with Section 6.2 of the HCP, the Service will so notify Permittees and will direct Permittees to make the required changes. As soon as practicable thereafter, the Service and Permittees will convene to discuss a schedule to address the changed circumstances. Permittees will make the required changes and report to the Service on their actions.

Such changes are provided for in the HCP and, therefore, do not constitute unforeseen circumstances or require amendment of the permits or HCP, except as provided in this section.

**10.3 Reductions in mitigation.** Permittees will not implement adaptive management changes that may result in less mitigation than provided for covered species under the original terms of the HCP, unless the Service first provides written approval. Permittees may propose any such adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for the proposed modifications (including supporting data), and the anticipated effects on covered species and other environmental impacts. Within 120 days of receiving such a notice, the Service will approve the proposed adaptive management changes, approve them as modified by the Service, or notify Permittees that the proposed changes constitute permit amendments that must be reviewed under Section 11.0 of this agreement.

## **11.0 MODIFICATIONS AND AMENDMENTS**

**11.1 Modifications, generally.** Neither this agreement nor the HCP may be modified by any party except in writing in accordance with the terms of this section.

### **11.2 Minor modifications.**

(a) Any party may propose minor modifications to the HCP or this agreement by providing notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on covered activities under the HCP and on covered species. The notice shall detail any proposed changes to the avoidance, minimization, mitigation, and monitoring measures to ensure that the affected species will be appropriately protected.

(b) The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval and will not necessitate amendment of the permits.

(c) If, for any reason, a receiving party objects to a proposed modification, the modification must be processed as an amendment of the permit in accordance with this section. The Service will not propose or approve minor modifications to the HCP or this agreement if the Service determines that such modifications would result in: (1) activities that are significantly different from those analyzed in connection with the original HCP, (2) adverse effects on the environment that are new or significantly

different from those analyzed in connection with the original HCP, or (3) additional take not analyzed in connection with the original HCP.

(d) Minor modifications to the HCP processed pursuant to this section are set forth in Section 7.6 of the HCP.

(e) Material changes to the HCP pursuant to Section 7.6 of the HCP will be processed as amendments of the permits in accordance with this section of the agreement.

**11.3 Amendment of the permits.** The permits may be amended in accordance with all applicable legal requirements including, but not limited to, the ESA, the National Environmental Policy Act, and the Service's permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including the effects on operations under the HCP and on covered species.

## **12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION**

**12.1 In general.** Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this agreement, the permits, and the HCP.

**12.2 No monetary damages.** Except as provided in Section 12.3, no party shall be liable for monetary damages to any other party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement, or any other cause of action arising from this agreement.

**12.3 Enforcement authority of the United States.** Nothing contained in this agreement is intended to limit the authority of the United States government to seek civil or criminal penalties, or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

**12.4 Dispute resolution.** The parties recognize that disputes concerning implementation of, compliance with, or termination of this agreement, the HCP, and the permits may arise from time to time. The parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

**12.4.1 Informal dispute resolution process.** Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies the aggrieved party proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time, the party alleged to be in violation may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the parties will consider nonbinding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

## **13.0 MISCELLANEOUS PROVISIONS**

**13.1 No partnership.** Neither this agreement nor the HCP shall make or be deemed to make any party to this agreement the agent for, or the partner of, any other party.

**13.2 Notices.** Any notice permitted or required by this agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

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134 Union Blvd.  
Lakewood, CO 80228-1807  
Telephone: 303-236-7920  
Fax: 303-236-8295

AND

Director, Rio Grande Water Conservancy District  
On behalf of  
San Luis Valley County and local governments  
10900 Hwy. 160 East  
Alamosa, CO 81101  
Telephone: 719-589-6301

AND

Colorado Parks and Wildlife  
On behalf of  
Colorado Department of Natural Resources  
Area 17  
0722 South Road 1 East  
Monte Vista, CO 81144

**13.3 Severability.** The terms and conditions of the permits shall be deemed severable, and if any term or condition of the permits or the HCP shall be held invalid, illegal, or unenforceable by a federal court, after exhaustion of available appeals, the remainder of the terms and conditions shall continue to be effective and binding upon the Service and the Permittees. Any lawsuit brought pursuant to the citizen suit provision of the ESA against a Permittee to enforce an individual covered activity's compliance with the ESA shall have no effect on the provisions of the HCP and permits or on other covered activities not subject to such proceeding, which shall remain in full force and effect. Noncompliance of one or more of the parties implementing the HCP will not affect the validity of the HCP as to the other participating entities.

**13.4 Entire agreement.** This agreement, together with the HCP and the permits, constitutes the entire agreement among the parties. This agreement supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter hereof and contains all of the covenants and agreements among the parties with respect to said matters, and each party acknowledges that no representation, inducement, promise, or agreement (oral or otherwise) has been made by any other party, or anyone acting on behalf of any other party, that is not embodied herein.

**13.5 Elected officials not to benefit.** No member of Congress shall be entitled to any share or part of this agreement, or to any benefit that may arise from it.

**13.6 Availability of funds.** Implementation of this agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

**13.7 Duplicate originals.** This agreement may be executed in any number of duplicate originals. A complete original of this agreement shall be maintained in the official records of each of the parties hereto.

**13.8 No third-party beneficiaries.** Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this agreement. The duties, obligations, and responsibilities of the parties to this agreement with respect to third parties shall remain as imposed under existing law.

**13.9 Relationship to the ESA and other authorities.** The terms of this agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the federal government. Nothing in this agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of the Permittees under the HCP and this agreement will be considered in any consultation affecting Permittees' use of the covered lands.

**13.10 References to regulations.** Any reference in this agreement, the HCP, or the permits to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

**13.11 Applicable laws.** All activities undertaken by any party hereto, including the appropriation of funds to support those activities, must be authorized by and in compliance with all applicable federal and state laws and regulations.

**13.12 Successors and assigns.** This agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the permits shall be governed by the Service's regulations in force at the time of any such assignment or other transfer. This condition is subject to Section 7.0 above.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permits.

BY

  
\_\_\_\_\_  
Acting Regional Director, Mountain-Prairie Region  
United States Fish and Wildlife Service  
Lakewood, Colorado

Date 11/15/12

BY

\_\_\_\_\_  
Director  
State of Colorado Department of Natural Resources

Date \_\_\_\_\_

BY

\_\_\_\_\_  
Board President  
Rio Grande Water Conservation District  
Alamosa, Colorado

Date \_\_\_\_\_

BY

\_\_\_\_\_  
Commissioner  
Alamosa County  
Alamosa, Colorado

Date \_\_\_\_\_

BY

\_\_\_\_\_  
Commissioner  
Conejos County  
Conejos, Colorado

Date \_\_\_\_\_

BY

\_\_\_\_\_  
Commissioner  
Costilla County  
San Luis, Colorado

Date \_\_\_\_\_

BY

\_\_\_\_\_  
Commissioner  
Mineral County  
Creede, Colorado

Date \_\_\_\_\_

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permits.

BY \_\_\_\_\_ Date \_\_\_\_\_  
Acting Regional Director, Mountain-Prairie Region  
United States Fish and Wildlife Service  
Lakewood, Colorado

BY M.A.L. \_\_\_\_\_ Date 10/29/12  
Director  
State of Colorado Department of Natural Resources

BY \_\_\_\_\_ Date \_\_\_\_\_  
Board President  
Rio Grande Water Conservation District  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Alamosa County  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Conejos County  
Conejos, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Costilla County  
San Luis, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Mineral County  
Creede, Colorado

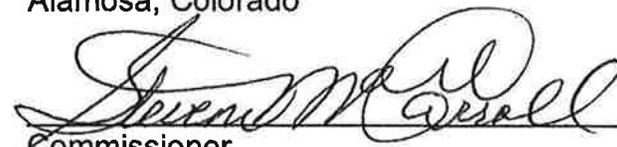
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permits.

BY \_\_\_\_\_ Date \_\_\_\_\_  
Acting Regional Director, Mountain-Prairie Region  
United States Fish and Wildlife Service  
Lakewood, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Director  
State of Colorado Department of Natural Resources

BY \_\_\_\_\_ Date \_\_\_\_\_  
Board President  
Rio Grande Water Conservation District  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Alamosa County  
Alamosa, Colorado

BY  \_\_\_\_\_ Date 1 Nov. 2012  
Commissioner  
Conejos County  
Conejos, Colorado

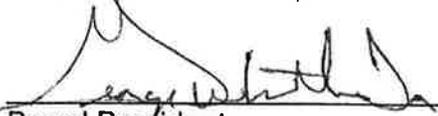
BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Costilla County  
San Luis, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Mineral County  
Creede, Colorado

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permits.

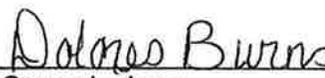
BY \_\_\_\_\_ Date \_\_\_\_\_  
Acting Regional Director, Mountain-Prairie Region  
United States Fish and Wildlife Service  
Lakewood, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Director  
State of Colorado Department of Natural Resources

BY  \_\_\_\_\_ Date 11/2/12  
Board President  
Rio Grande Water Conservation District  
Alamosa, Colorado

BY  \_\_\_\_\_ Date 11/7/12  
Commissioner  
Alamosa County  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Conejos County  
Conejos, Colorado

BY  \_\_\_\_\_ Date 10/29/12  
Commissioner  
Costilla County  
San Luis, Colorado

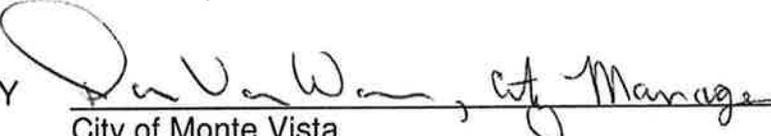
BY  \_\_\_\_\_ Date 11/5/12  
Commissioner  
Mineral County  
Creede, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Rio Grande County  
Monte Vista, Colorado

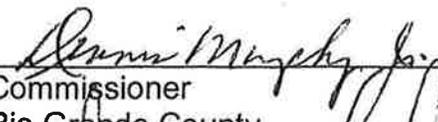
BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Saguache County  
Saguache, Colorado

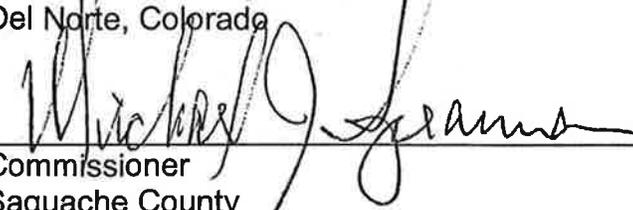
BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Alamosa  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Del Norte  
Del Norte, Colorado

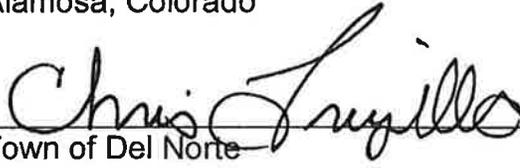
BY  \_\_\_\_\_ Date 11-6-2012  
City of Monte Vista  
Monte Vista, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of South Fork  
South Fork, Colorado

BY  Date 10/31/12  
Commissioner  
Rio Grande County  
Del Norte, Colorado

BY  Date 11/5/12  
Commissioner  
Saguache County  
Saguache, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Alamosa  
Alamosa, Colorado

BY  Date 11/7/12  
Town of Del Norte  
Del Norte, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Monte Vista  
Monte Vista, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Town of South Fork  
South Fork, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Rio Grande County  
Monte Vista, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Saguache County  
Saguache, Colorado

BY *Kathleen Rogers* Date 10-31-12  
City of Alamosa  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Del Norte  
Del Norte, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Monte Vista  
Monte Vista, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of South Fork  
South Fork, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Rio Grande County  
Monte Vista, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
Commissioner  
Saguache County  
Saguache, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Alamosa  
Alamosa, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Del Norte  
Del Norte, Colorado

BY \_\_\_\_\_ Date \_\_\_\_\_  
City of Monte Vista  
Monte Vista, Colorado

BY *Kenneth D. Brooke (Mayor)* Date 10-30-12  
City of South Fork  
South Fork, Colorado  
*Town*  
*St*